U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12092277

Date: NOV. 24, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a radiologist, seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that although the record established that the Petitioner satisfied the initial evidentiary requirements, it did not establish, as required, that the Petitioner has sustained national or international acclaim and is an individual in the small percentage at the very top of the field. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to aliens with extraordinary ability if:

> (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
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> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
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> (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation

at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); see also *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner is a physician specializing in musculoskeletal radiology, interventional radiology, and ultrasound. He trained at various medical schools in India and the United States, and is now a board certified radiologist. Since 2012, he has worked for [redacted].[1]

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner initially claimed to have met seven criteria, summarized below:

- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material about the alien in professional or major media;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance;
- (vi), Authorship of scholarly articles;
- (viii), Leading or critical role for distinguished organizations or establishments; and
- (ix), High remuneration for services.

The Director concluded that the Petitioner met three of the evidentiary criteria, numbered (iv), (vi), and (viii). On appeal, the Petitioner asserts that he also meets the evidentiary criteria numbered (ii), (v), and (ix). The Petitioner does not contest the Director's conclusions regarding criterion (iii), relating to published material. (In initially claiming to satisfy this criterion, the Petitioner did not submit

[1] In 2014, [redacted] filed an immigrant petition seeking a different classification on the Petitioner's behalf. That petition was approved in 2015.

or identify any published material in the record that names him.) We therefore consider the Petitioner to have abandoned that criterion.[2]

After reviewing all of the evidence in the record, we agree with the Director that the Petitioner satisfies the criteria numbered (iv) and (vi), and we further conclude that the Petitioner has satisfied criterion (ix). We will discuss the remaining criteria below. As the Petitioner has demonstrated that he satisfies three criteria, we will also evaluate the totality of the evidence in the context of the final merits determination further below.

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.* 8 C.F.R. § 204.5(h)(3)(ii)

The Petitioner documents membership in seven medical associations, and asserts that they require outstanding achievements of their members. As supporting references, the Petitioner identifies the websites of some of these associations, thereby introducing them into the record. For others, the Petitioner submits copies of the bylaws. The website of the [redacted] does not address membership requirements at all. The materials from other associations do not list requirements beyond board certification, experience, member sponsorship (in some instances), and payment of dues or application fees.

The Petitioner asserts that "[b]oard certification is a demanding process," and therefore any membership that requires board certification is a qualifying membership, but the Petitioner has not established that board certification is an outstanding achievement rather than a credential with rigorous requirements. The Petitioner also does not establish the percentage of radiologists with board certification. This information is crucial because if most radiologists are board certified, then the Petitioner cannot credibly assert that board certification is a rare or special distinction in the specialty.

On appeal, the Petitioner contends that the Director improperly requested "information to establish that the individuals who review prospective members' applications are recognized as national or international experts in their disciplines or fields." This request, however, is wholly consistent with the regulatory requirement that members' achievements be "judged by recognized national or international experts in their disciplines or fields." We do not accept the Petitioner's contention that those who review membership applications are nationally recognized by virtue of being board certified radiologists.

The Petitioner states: "Being board certified in radiology is considered an outstanding achievement in the medical field," but does not corroborate this claim. The Petitioner also states: "Out of many medical doctors in the world, only a few percentages [*sic*] are board certified in radiology." This assertion is true, but only because most "medical doctors" are not radiologists and therefore would have no reason to

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[2] *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived). *See also Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO).

pursue board certification in radiology. One's choice of specialty is not intrinsically an outstanding achievement. Furthermore, at other points in the record, the Petitioner asserts that his field is radiology, rather than the broader "medical field." The inconsistent definition of what constitutes his field further prevents the Petitioner from making a consistent case for eligibility.

The Petitioner has not shown that he satisfies this criterion.

> *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v)

The Petitioner has published four scholarly articles. He states that these articles "are of major significance because the articles document work that is first of its kind." This assertion is not persuasive. The regulation requires contributions to be both "original" *and* "of major significance." The latter clause would be redundant if originality (i.e., being "first of its kind") inherently *implied* major significance.

Furthermore, the Director acknowledged that these articles satisfy a separate criterion at 8 C.F.R. § 204.5(h)(3)(vi). Originality appears to be a cornerstone requirement of scholarly publications.[3] The Petitioner has not shown otherwise. Therefore, by the Petitioner's reasoning, most published scholarly articles are also contributions of major significance. We will not interpret our regulations in such a manner that satisfaction of one criterion inherently implies satisfaction of a second; to do so would be contrary to the statutory demand for extensive documentation.

Nevertheless, a particular scholarly article may contain an original contribution of major significance. Therefore, we will consider evidence of the impact of the Petitioner's scholarly articles. The Petitioner's graduate thesis concerned [redacted] bronchoscopy, which produces images of the respiratory system using noninvasive methods such as [redacted]. In letters in the record, colleagues claim that "[b]ecause of [the Petitioner's] work in the field of [redacted] Bronchoscopy, it is now a routine noninvasive examination for diagnosing airway problems." To support this claim, it is not sufficient to show that [redacted] bronchoscopy is widely used for the application discussed in the article; the Petitioner must also establish that it is widely used *because of the Petitioner's work*. This is a very important distinction, because the Petitioner does not claim to have invented [redacted] bronchoscopy. The 19 documented citations do not establish that [redacted] bronchoscopy is widely used for the specific clinical application described in the article, or that the Petitioner is largely responsible for the adoption of the technique.

The Petitioner asserts that his "4 articles have earned unusually high numbers of citations in the context of radiology," and that he "has continued to publish material in his field with a steady increase in his citation levels over his publication history." The record does not support these claims. The assertion that the Petitioner "has continued to publish material" implies a fairly regular output, but three of the articles date from 2003-04, with no further publications until 2019, very shortly before the petition's filing date.

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[3] "As defined in the academic arena, a scholarly article reports on *original* research, experimentation, or philosophical discourse." USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14* 9 (Dec. 22, 2010), https://www.uscis.gov/legal-resources/policy-memoranda.

The Petitioner documents 19 citations (over 15 years) of one of his articles, and five citations of another (over 16 years), at the time of filing; he does not document any citations of the others. The Petitioner does not provide sufficient evidence to show that his articles are heavily cited in comparison to others relating to similar subjects. A search engine printout listing ten such articles shows an article from 2004, cited 32 times; an article from 2008, cited 65 times; and an article from 2013, cited 27 times. A fourth article shows 19 citations, the same as the Petitioner's 2004 article, but this article appeared ten years later and therefore accumulated the same number of citations over a substantially shorter period. This very small sample does not support the claim that the Petitioner's "articles have earned unusually high numbers of citations," but a definitive conclusion would require considerably more evidence.

The Petitioner has not satisfied this criterion.

> *Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.* 8 C.F.R. § 204.5(h)(3)(viii)

The Director concluded that the Petitioner satisfies this criterion through his critical roles for [redacted] and the [redacted] We disagree. On appeal, the Petitioner asserts that initial exhibits N and T established the organizations' distinguished reputation. Exhibit N is a 2018 press release announcing [redacted]'s "three-year term of accreditation" relating to a particular medical procedure. The Petitioner does not submit objective evidence to establish that accreditation is a mark of distinction, rather than simply a matter of meeting certain professional standards. The Petitioner states that "this specific accreditation has only been granted to 1,928 out of 40,517 accreditations in over 34 years," but does not show that [redacted]'s accreditation is therefore more prestigious or otherwise distinguished than the other unspecified types of accreditation. The other accreditations may simply refer to other procedures. The burden is on the Petitioner to show that [redacted]'s accreditation is superior to, rather than simply different than, other types of accreditation. The Petitioner has not met this burden.

The Petitioner also contends that [redacted] "is one of the highest-ranked U.S. radiology center[s] outside of the continental U.S." Apart from being an unsubstantiated assertion, this description necessarily excludes most of the radiology centers in the United States. The Petitioner does not establish the number of U.S. radiology centers outside the continental United States, or cite any source that ranks them.

Exhibit T is a letter from the executive director of the [redacted], stating that the Petitioner "has been a very active member" of the organization, which is "comprise[d] of medical doctors and allied health care providers." This letter does not establish that the [redacted] has a distinguished reputation in comparison with other state and territorial medical associations of its kind. The word "distinguished" is inherently comparative; status as a territorial-level medical association does not inherently convey distinction. The Petitioner has not established that the [redacted] has a national or international reputation, which is vital in the context of establishing national or international acclaim for a final merits determination.

In the absence of evidence that [redacted] and the [redacted] have distinguished reputations, we need not consider the separate question of whether the Petitioner performed in a leading or critical role for those organizations. The Petitioner has not satisfied this criterion.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix)

The Director concluded that the Petitioner earned a "base salary" much lower than his total compensation, but this conclusion was erroneously derived from pay receipts that subtracted paid leave from hours worked. Paid leave is not a fringe benefit in excess of base salary. The total pay shown on the pay receipts is consistent with the salary stated in a contract in the record. That total pay, in turn, is substantially higher than the median salary shown in data from the Bureau of Labor Statistics. We conclude, therefore, that the Petitioner has commanded a high salary.

B. Final Merits Determination

As the Petitioner submitted the requisite initial evidence, we will evaluate whether he has demonstrated, by a preponderance of the evidence, sustained national or international acclaim and that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if their successes are sufficient to demonstrate that they have extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.[4] In this matter, we determine that the Petitioner has not shown his eligibility.

In the final merits determination, the Director acknowledged that the Petitioner had satisfied the letter of three regulatory criteria, but determined that the evidence submitted under those criteria does not establish sustained acclaim or constitute extensive documentation of recognition of his achievements. The Director concluded that the Petitioner's judging work consisted mainly of routine peer review, and that the Petitioner had not shown the impact of his published scholarly articles.

On appeal, the Petitioner states that his judging activity "is credible, probative and consistent with the finding that [he] has a career of acclaimed work in radiology." The Petitioner notes his service on the editorial board of the [redacted] *Medical Association Journal*. The documentation of this service takes the form of email messages asking him to perform peer review of manuscripts submitted for publication; the Director noted that peer review of this kind is routine in the field, rather than a hallmark of acclaim. Those messages are dated after the petition's filing date, and thus do not show that the Petitioner had performed this function prior to filing the petition. Furthermore, the record does not show that the *Journal* (which published only one issue before the filing date) enjoys a level of prestige such that membership on its editorial board indicates recognition beyond [redacted]

The Petitioner's other documented participation as a judge has been routine and local, consisting of faculty review of student work and a peer review program at [redacted] in which "each radiologist reviews other radiologists' work every quarter." Review at this level is neither contingent upon nor reflective of sustained national or international acclaim. The Petitioner acknowledges that "[g]enerally, an Assistant

[4] *See also* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 9 (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established, by a preponderance of the evidence, the required high level of expertise for the immigrant classification).

Professor [at a] medical school" is "required to assess and judge student coursework." It does not follow that every assistant professor is thereby nationally or internationally acclaimed, or has reached the top of the field. The Petitioner, on whom the burden of proof rests, has not shown that he engaged in judging activity beyond the routine duties inherent in those positions.

In the denial notice, the Director referred directly to only one of the Petitioner's scholarly articles. On appeal, the Petitioner states that his four articles "demonstrated by preponderance of evidence that [the Petitioner] has a career of acclaimed work in radiology." A researcher might achieve acclaim through publication of scholarly articles, but the existence of those articles does not inherently establish that acclaim. The Petitioner has not established that only acclaimed radiologists have produced published work, and the Petitioner has not provided evidence that would meaningfully distinguish his articles from those of others in the field. Most of the Petitioner's published articles derive from a time when the Petitioner was completing his own medical training.

The Petitioner contends that his published work reflects acclaim in the field, but the various arguments offered to support this proposition are not persuasive. For example, the Petitioner notes that he was a co-author of "the [redacted] Medical Journal's first article ever," and contends that this "is proof that his participation exceeds that of other researchers or reflects sustained acclaim." The Petitioner does not adequately explain this conclusion. There is no presumption of distinction for the inaugural issue of a new journal which, by definition, has no prior history of impact or influence on the field. The Petitioner does not establish that the appearance of the new journal attracted significant attention outside [redacted]

The Petitioner submits letters, mostly from colleagues, attesting to his skill as a physician. These colleagues have worked with the Petitioner, which gives them insight into his particular skills and activities, but does not reflect recognition at the national or international level as the statute and regulations demand.

Perhaps most notably, the Governor of [redacted] asserts that the Petitioner "possesses an exceptional talent." The Governor does not identify specific medical contributions, stating, instead, that it is difficult to recruit physicians to work in [redacted] Other individuals also assert that there is a shortage of qualified radiologists [redacted] Nevertheless, addressing such a shortage is not a matter of sustained national or international acclaim. The local need for qualified workers is a legitimate factor in some other immigrant classifications, such as the one for which the Petitioner has already been approved. A priority date backlog in that classification is not a basis, in whole or in part, for approving another petition in a much more restrictive classification. The value of the Petitioner's work for patients in [redacted] is not tantamount to national or international acclaim.

The record shows that the Petitioner is a competent and dedicated physician who has been very active within the local medical community, but it does not show that his work has attracted significant attention beyond the institutions where he has worked or studied, or that his most recent work has resulted in any discernible recognition beyond the [redacted] Civic dedication and the possession of valuable skills do not amount to sustained national or international acclaim, nor do they place the Petitioner among the small percentage at the very top of his field.

III. CONCLUSION

The Petitioner seeks a highly restrictive visa classification, intended for individuals at the top of their respective fields, rather than for individuals with some degree of local prominence. Even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has not shown that the significance of his work is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.